

About the Independent Police Auditor

Introduction

In nine years the Office of the Independent Police Auditor (IPA) has developed into a model of civilian oversight of law enforcement that has been recognized and replicated throughout the United States. The IPA has an open channel of communication with the San José Police Department (SJPd) which has lead to collaborations in such areas as creating informational material for the public, community presentations, training sessions and most important, the implementation of IPA recommendations. While agreement is not always reached between the IPA and the Chief of Police, there is an understanding that there will be professional disagreements.

A. Establishment of the Independent Police Auditor

The Independent Police Auditor was initially established by the San José City Council and thereafter, on November 4, 1996, San José residents voted to amend the City Charter making the IPA a permanent city office. The change to the City Charter also directed the City Council to appoint the Police Auditor to serve four year terms and that the removal of the Police Auditor, midterm, requires a vote of at least ten of the eleven City Council members.

B. Independence of the Police Auditor

As set forth in Title 8 of the San José Municipal Code, Section 8.04.020:

1. The Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the Police Auditor alone.
2. No person shall attempt to undermine the independence of the Police Auditor in the performance of the duties and responsibilities set forth in Section 8.04.010.

C. Functions of the IPA

Section 8.04.010 of the San José Municipal Code, states that the Independent Police Auditor shall have the authority and responsibility to receive, review, and report on citizen complaints filed against peace officers employed by the San José Police Department (SJPd). The Independent Police Auditor's Office shall be separate from all other City functions and shall report directly to the Mayor and City Council.

The Office of the Independent Police Auditor (IPA) has three primary functions:

- It serves as an alternate forum where people may file a complaint.
- It reviews the investigations of complaints conducted by the San José Police Department to determine if the investigation was complete, thorough, objective, and fair. Based on these reviews, the IPA makes recommendations for policy changes to the SJPd.
- It promotes public awareness of a person's right to file a complaint.

E. Requirements

The IPA reports are prepared on a semi-annual basis. This Year End Report covers the period from January first through December thirty-first of 2002. This report is prepared by the IPA pursuant to the requirements of the San José Municipal Code Section 8.04.101 (D). This section states that the IPA's report shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- Analyze trends and patterns; and
- Make recommendations.

Highlights of this Report

A. Year 2002, No Officer-Involved Shootings resulting in injuries or deaths:

For the third consecutive year, officer-involved shootings decreased in the City of San José. Four years ago, the San José Police Department was involved in eight officer shootings that resulted in seven people fatally shot and one seriously wounded. The SJPD and the IPA worked on implementing changes that focused on the use of deadly force. These efforts contributed to ending the year 2002 with no officer-involved shootings that either injured or killed a citizen or police officer.

B. New Recommendations:

1. This report contains recommendations based on an analysis of the San José Police Department "Early Warning Program". This program tracks the number of complaints officers receive. Subject officers receiving three Formal complaints or a combination of five complaints of any type within a 12-month period are scheduled to participate in a counseling session with his/her chain of command up to the bureau Deputy Chief and the Internal Affairs Commander. This is a "non-disciplinary" process and no record of the substance of the session is kept. The IPA made recommendations based on the findings of this study analyzing the impact of the Early Warning System on the subject officers' proactive policing.
2. The second recommendation seeks to implement, as a preventative measure, clear policy addressing conflicts of interest when handling complaints against top ranking San José Police Officers.

C. Citizen Complaints Patterns and Trends:

In this section, the different type and number of complaints are analyzed to detect varied patterns and trends. Statistics are reported by geographic areas, by demographics of the complainant and subject officer, by the type of allegation and the discipline imposed.

D. Community Relations:

In this section, the purpose, results, frequency, and nature of the IPA's community outreach is chronicled. Communication and interaction with the citizens of San José is crucial to the success of this office. The IPA's mandate to conduct outreach is based on the premise that the IPA must build a trust relationship with the public in order to carry out its mission. Because the IPA works with confidential police personnel matters, state law prohibits public disclosure of the contents of a citizen complaint investigation. Therefore, the public is asked to have faith that the IPA will

properly and ethically discharge its duties. The word faith is used because the public is asked to believe in the objectivity, thoroughness, and fairness in reaching a finding without seeing the evidence that lead to the outcome of their complaint.

E. Pending Recommendations:

Every year the IPA reviews prior and any pending recommendations and reports on their status. This is a critical and revealing measure of the effectiveness of this office because it tracks the changes and improvements made by the SJPd as a result of the IPA's oversight function.

New Recommendations

"Early Warning Systems":

A. Introduction

The San Jose Police Department's "Early Warning System" (EWS) is designed to identify possible errant behavior by officers, and to take corrective action. The EWS is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a serious problem that can result in: injury to an officer or citizen, criminal prosecution, and/or civil liability. The Intervention Counseling Program is "Not" a form of discipline and only the fact that a session took place is recorded. The EWS allows for post-intervention monitoring of each subject officer. In addition, the Independent Police Auditor (IPA) uses this system to track the number, type, and disposition of subsequent complaints for officers that received counseling and statistical information is compiled and included in the IPA's public reports.

Most police administrators agree that early warning systems are necessary and an effective management tool. However, a concern voiced by some officers is that this type of tracking system negatively impacts proactive policing, results in a decrease in the number of self initiated contacts, and that the fear of receiving complaints leads to an increased risk in officer safety. The IPA sought answers to these very serious allegations by conducting analysis of the subject officer's self-initiated contacts, subject officer's perceptions, and an analysis of subsequent complaints to determine the existence and degree of impact of the EWS.

B. Methodology

The IPA used standard auditing techniques and incorporated steps used in the Scientific Method style of research. The IPA followed eight different steps in a developmental chain of procedures to test the following hypotheses.

1. The SJPd's Early Warning System does not result in a decrease of self-initiated contacts.
2. Intervention Counseling triggered by the SJPd's Early Warning System did not negatively impact the subject officers.
3. The SJPd's Early Warning System and the Intervention Counseling resulted in a decrease in subsequent complaints for the officers that were part of this study.

C. Analysis

There were 23 different officers that were identified through the early warning system as having the required number of complaints to qualify for Intervention Counseling in the 2001 calendar year. Three were excluded from this analysis because two officers resigned and one was terminated during this period.

This study analyzed data for the period of six months prior and six months after the subject officer's Intervention Counseling (IC) date. The IC date was used as the midpoint between the broadest possible ranges examined, which were from 8/1/00 to 6/30/02. For example, the data collected for an officer receiving Intervention Counseling on 1/1/01 ranged from 8/1/00 to 7/1/01. The data for an officer receiving Intervention Counseling on 12/31/01 ranged from 6/30/01 to 6/30/02.

The following are the results: 20% of the subject officers had a 100% increase in self initiated contacts, 35% had a 40% decrease in self initiated contacts, and 45% had no change in self-initiated contacts. These figures indicate that 65% of the subject officers did not experience a reduction in the number of contacts they made of their own volition therefore, their proactive policing did not decrease. Most officers in each of the three groups, (increase, decrease, no change in self-initiated contacts), received complaints subsequent to their Intervention Counseling.

D. Conclusion

Through this study, the IPA sought to determine if there was evidence to support the perception that the Early Warning System (EWS), a system that tracks the number of complaints an officer receives and then intervenes by providing counseling, results in a work slowdown, negatively impacts the officers, and/or decreases the number of subsequent complaints. The analysis of the data revealed that 65% of the subject officers' proactive work did not decrease and of the group that experienced a positive impact, their combined number of self-initiated contacts increased 100%. Officers in all three groups studied received complaints subsequent to attending Intervention Counseling. Though not every applicable variable that could have impacted this issue was identified, the data studied was sufficient to make general findings that support two of the hypotheses studied.

1. The SJPd's Early Warning System **did not** result in a decrease of self-initiated contacts for 65% of the subject officers studied.
2. The SJPd's Early Warning System **did not** negatively impact the subject officers who received Intervention Counseling.
3. The SJPd's Early Warning System and Intervention Counseling **did not** result in a decrease of subsequent complaints for subject officers that were counseled.

E. Recommendations

1. It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.
2. It is recommended that the Chief of Police implement procedures to insure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.

3. It is recommended that the Chief of Police direct the Command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the intervention counseling session.
4. It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.
5. It is recommended that the Chief of Police upgrade the SJPd's early warning system to include other indicators such as civil claims and lawsuits.

Complaints Against High Ranking Officers

A very sensitive and important concern that needs to be addressed involves conflicts, real or perceived, that arise from internally investigating allegations of misconduct against high-ranking¹ San Jose Police Department command officers. For purpose of this discussion, high-ranking officers include the Assistant Chief and the Chief of Police. While these types of complaints are not common, nevertheless they have the propensity of having very serious and far reaching negative consequences.

Over five years ago, the Independent Police Auditor, the former City Manager, and the former Chief of Police agreed that if allegations of misconduct were made against the Chief or Assistant Chief of Police that it would be the City Manager who would determine if the allegations gave rise to a misconduct complaint. If they did, the complaint would be investigated by personnel outside the San Jose Police Department. The completed investigation would then be audited by the Independent Police Auditor. This oral agreement was made as a result of the investigation of a complaint, which was filed against a high-ranking officer, was internally investigated, and resulted in much controversy and animosity between all parties involved. This agreement was not memorialized in writing.

The recent indictment of the top command staff of the San Francisco Police Department is a reminder of the need to have a written policy. This policy should also address conflicts of interest that could arise when misconduct allegations are filed against an officer who because of his/her rank or familial ties may be given preferential treatment. The purpose of having policies in place to address potential conflicts is to inform, guide, and depersonalize sensitive operational decisions that officers are forced to make when a conflict arises. As stated earlier, allegations against top ranking officers are rare but when they occur, they have the potential for devastating consequences. It is therefore important to take proactive steps to anticipate and thwart such situations.

Recommendation:

It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPd officers. This policy should include clear guidelines that specify what constitutes a serious allegation, the process to notify the City Manager, address conflicts that could arise during the handling of such complaints, and the process for notification to the Independent Police Auditor to monitor and audit these complaints.

¹ For purpose of this report, high ranking officers include the Assistant Chief and the Chief of Police

Updates On Prior Recommendations

An important element in bridging the gap between the San José Police Department and the citizens of San José is recognizing issues or concerns that exist between the police department and the public. Only by identifying these issues or concerns can change take place to create a healthier relationship between the public and those entrusted to serve and protect. The Office of the Independent Police Auditor (IPA) focuses on trends in police conduct and actions that are counter-productive in creating a favorable relationship between the police and the public. The IPA makes recommendations based on identified trends to improve the SJPD's level of service, enhancing police relations with the public. When the IPA submits recommendations, research and studies are conducted to reveal the feasibility of proposed changes. Changes may be proposed about police practices, policies, procedures, facilities, and resources available to the public. Recommendations ultimately are adopted or not adopted. Recommendations that have been adopted have consistently affected positive change. Recommendations not adopted were the result of obstacles that were beyond our ability to overcome. In many cases recommendations are not adopted due to current conditions that exist such as the current economic situation. While these recommendations are not adopted, it does not necessarily mean that they have been rejected. The recommendation may become suspended or dormant until such time when conditions allow the recommendation to be reintroduced.

Recommendations made by the IPA that have not been adopted include:

- Adding an additional area in the police department's front lobby area to separate potentially dangerous individuals from the rest of the public.
- Adding monitors in the police department main lobby to provide information to the waiting or visiting public.
- Making the public rest rooms more easily accessible from the police department main lobby.
- Employment of a receptionist in the police department main lobby to direct people and answer commonly asked questions.
- Incentives to attract officers to work at the police department's Information Center.

Recommendations that have been adopted include:

- Expansion of the front lobby area of the police department.
- An interview room to interview victims and witnesses.
- Additional courtesy telephone for the public's use in the main lobby of the police department.
- Customer service training for desk officers.

The primary responsibility of Information Center Sergeants is to be at the front desk of the SJPD lobby.

- Job descriptions to include skills such as communications, conflict resolution, and interpersonal skills.

- Implement recruiting strategies that address family related issues.
- Revise transfer opportunities for SJPD sergeants.
- Provide training in communication and interpersonal skills to all SJPD staff.
- Compile vehicle-stop data continuously for comparative analysis.
- Expansion of the fields of data collection pertaining to the treatment of individuals during police stops.
- Develop a process for tracking “racial profiling” allegations.

The IPA has historically been instrumental in affecting positive change within the San José Police Department. This would not have been possible however, without the cooperation and willingness of the Police Department to adopt to the IPA’s recommendations and to take an active role in making the necessary changes. These collaborative efforts have facilitated bringing the community and the SJPD closer together, creating a more positive and open relationship.

Use of Force Analysis

A. Introduction

This chapter focuses on analyzing the use of force that officers employed during the 2002 calendar year and that gave rise to a citizen complaint investigation. In 2002, the members of the SJPD handled a total of 463,984 calls for service and only 11% involved making an arrest or issuing of a criminal citation. This is consistent with the overall low crime rate in the City of San José.

B. Officer–Involved Shootings

Lethal force, obviously the highest level of force used by the police, results in the most severe injuries to a citizen and therefore, commands the greatest attention from the IPA, SJPD, elected officials, community, and media. The year 2002 marked the fourth consecutive year that officer-involved shootings decreased in the City of San José. Four years ago, the SJPD was involved in eight officer shootings, which resulted in seven people fatally shot and one seriously wounded. In 2002, there were no citizens wounded or killed by the police.

In addition to the creation of a shooting review panel, other measures were implemented such as greater use and availability of less lethal weapons. In 2000, the SJPD completed a state of the art training center where scenario-based firearms training is taught. There was also an increase in the number of officers trained in recognizing and handling incidents involving people with mental disabilities. It is difficult to conclusively point to the precise reasons for the decrease in officer-involved shootings. However, it cannot be ignored that a correlation exists between the measures described above and the fact that in 2002 no one was injured or killed by a San José Police Officer as a result of an officer-involved shooting.

C. Use of Force Allegations

In 2002, 141 Formal complaints were filed. Of these complaints, 54 included allegations of the use of Unnecessary Force (UF) which is two more UF complaints than were filed the prior year.

Nine of the UF complaints contained allegations that were classified as Class I complaints (three more than in 2001). Class I complaints involve allegations of serious bodily injury requiring medical care.

The IPA tracks different data regarding UF complaints to determine whether any trends or patterns can be detected regarding use of force by San José police officers. Data provided concerning the “Degree of Injury” indicated that the vast majority (75%) of UF complaints continue to involve allegations of “Minor” injuries.” 18% of the UF complaints involved allegations of “Moderate” injuries and in 7% of the complaints, “No Visible” injuries could be seen.

Data concerning the “Type of Alleged Unnecessary Force Used” shows that the type of force used most often was an officer using his or her hands (41%). The use of the ground (14%) and tight handcuffs (13%) were the next most frequent types of force alleged. The unnecessary use of a baton by an officer accounted for only eight percent of the allegations. Another data table indicates that the percentages for the types of unnecessary force alleged in 2002 are consistent with percentages from the previous four years. It should be noted that allegations of the use of more severe types of force such as batons, chemical sprays or guns, remains relatively low, an indication that officers are adhering to the department’s force-option policy more frequently.

One area of some concern is the data about what portion of the complainant’s body was impacted by the force used by the officers. The distribution of injuries to different parts of the body in 2002 saw an increase in injuries to the head, which is the fourth year in a row that these allegations have increased. SJPD officers are trained to apply force to limbs. This is an area that the IPA will continue to monitor.

Community Relations

The success of San José’s Independent Police Auditor (IPA) is highly attributed to extensive community involvement. Unlike other City offices, this office cannot share information with the public about cases. The community is asked to have faith and trust the IPA’s decisions. The trust and relationships this office has established and continues to foster is of an essence and is a key to the office’s success. Such relationship is maintained by actively engaging the community and doing the following:

- Having a strong, representative, and active advisory committee (IPAAC);
- Actively serving on community organizations;
- Staying up to date with current events and legislation;
- Researching and offering solutions along with recommendations;
- Networking with national organizations; and
- Mentoring and advising cities nationwide.

IPAAC

The Independent Police Auditor Advisory Committee (IPAAC) serves as the “eyes and ears” of the IPA in the community. Members of this committee help identify, mobilize and coordinate resources to assure maximum public, private, agency and individual commitment to provide expanded police oversight.

2002 Spotlight: Youth Guide

The IPA published the first youth guidebook titled, “A Student’s Guide to Police Practices.” The goal of the youth guide is to provide information about interacting with police officers and to help them make smart decisions.

IPA in the Local Community

In 2002 the IPA attended many community events, and on several occasions, was asked to return and present to other organizations. The IPA believes that going out to the community and engaging with groups citywide is what has created visibility of the services available. Examples of such efforts are the 36 referral sites located citywide.

Beyond Recommendations

In 2002, the IPA took the initiative to research and attain professional training on mediation, conciliation, and conflict resolution in an effort to provide training in customer service to the San José Police Department (SJPd). The office anticipates training to begin in 2003.

A National Role Model

The Independent Police Auditor serves as a board member for the National Association for Civilian Oversight of Law Enforcement (NACOLE). The IPA presented a successful panel discussion at NACOLE’s Annual Conference entitled, “Building Your Public, Media, and Political Base.” The IPA recognizes and embraces the expectations set by the community, and is committed to serving the public with the highest regard for professionalism, courtesy, and sensitivity.

The Complaint Process and Year End Statistics

This chapter describes the complaint process and provides statistical information about the different types of cases received in 2002 by both the Office of the Independent Police Auditor (IPA) and the Internal Affairs Unit (IA) of the San José Police Department (SJPd). It also provides information about the allegations made in the cases filed, the investigation findings, and the discipline imposed for sustained cases.

There was a total of 430 cases filed in **2002** at the IPA and IA offices combined which is slightly less than the **461** cases filed in **2001**. While not as large, this reduction continues a trend that began in 2000. There are several factors to which the lower number of recorded cases can be attributed, including: 1) SJPd implementation of IPA recommendations; 2) self-initiated policy changes by the SJPd; 3) the informal handling of complaints by supervisors in the field; and 4) the office move and change of telephone number for the IPA office.

Cases must be classified as a complaint before the Internal Affairs Unit of the SJPd will conduct an investigation. Of the 430 cases filed in 2002, 232 were classified as complaints that required investigation by the Internal Affairs Unit. By comparison, there were 258 complaints filed in 2001.

This chapter also includes a variety of other data, including:

- the number of audits conducted by the IPA
- the number of times the IPA requested additional information from IA concerning complaints being audited
- the Sustained Rate for formal complaints
- the number of complaints audited in which the IPA disagreed with the SJPd concerning the finding of the complaint
- the number of complaints in which discipline was imposed
- a five-year comparison of the types of discipline imposed

Cases by Council District

In this chapter, the Council District charts show cases and allegations in their respective City Council Districts. Illustration A lists each Council District and the types of cases that were received in each District. Typically, the highest number of cases (162 or 38% of all complaints) is generated in District 3, largely because of the diverse activities generated in the downtown area. District 6, a neighboring district, has the second highest number of cases with 39, and District 5 is a very close third highest with 37 cases. District 3 also had the highest number of Unnecessary Force allegations followed by District 5, District 6 and District 7.

Subject Officer Demographics

Various types of statistical data concerning police officers receiving complaints are presented in this chapter. In 2002, 314 (22%) of the 1399 San José police officers received citizen complaints. Of the 314 officers receiving complaints, female officers received 16 or 5% of the complaints, which is lower than the 9% female make up of San José police officers.

The data also indicates that San José police officers received complaints by ethnicity in numbers comparable to their ethnic make up of the San José police force. Years of experience data indicate that officers with two to four years of experience received the highest number of complaints. These officers were responsible for 27% of all the complaints received. This is a reduction from the previous year's 30%.

Of the 1399 officers in the SJPd in 2002, 260 different officers received complaints. However, only 41 different officers received two or more complaints. Therefore, 19% of the SJPd received at least one complaint while only 3% received multiple complaints.

Complainant Demographics

This chapter provides a visual representation of the background of the complainants for 2002. This information is gathered from a voluntary questionnaire complainants are asked to fill out. 114 male and 71 female complainants responded by returning the survey for a sample of 185 complainants. The data from this sample indicated, among other things, that complainants of European American ethnicity filed 35% of the complaints; Hispanic/Latino complainants filed 34%, and African American complainants filed 20% of the complaints. Other data presented concerns the age, educational level, and occupation of the complainant.

Conclusion

The year 2002 ended without a serious ethical or operational police crisis. Complaints continued to maintain a similar number and pattern as last year. As the Office of the Independent Police Auditor (IPA) approaches its 10th anniversary, the IPA will continue to introspectively evaluate the quality of the services it provides to the community and to the San José Police Department (SJPd).

The success of this office is attributed to the support from the community, elected officials, and the working relationship it has developed over the years with the San José Police Department. The IPA and the SJPd operate independently but in a true spirit of cooperation.